IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARMAINE BROWN & ORAL DOUGLAS, in their individual capacities and as Administrators of the Estate of SHACQUIEL A. DOUGLAS	:	CIVIL ACTION
v.	:	
CITY OF PHILADELPHIA, et al.	:	NO. 99-4901

MEMORANDUM and ORDER

Hutton, J. July 31, 2001

Presently before this are Defendants City of Philadelphia, Mark T. Stewart and John Caffey's Motion for Summary Judgment and Memo. of Law in Support of Summary Judgment (Docket No. 31), Plaintiffs' Memo. of Law in Support of Plaintiffs' Response to the Motion for Summary Judgment (Docket No. 39), Defendant's Reply to Plaintiffs' Response (Docket No. 40). For the following reasons, said Motion is **GRANTED**.

I. INTRODUCTION

This case arises out of the unfortunate and untimely death of Plaintiffs' one year old son, Shacquiel Douglas (the "Decedent"). On April 22, 1998, the Decedent was at the residence of Angela Morris ("Morris"), his maternal aunt. Morris resides on Weaver Street in Philadelphia, Pennsylvania. While there, the Decedent choked on a grape. Morris dialed "911" at 11:06:22 am and informed the operator that her nephew was choking on a grape. The 911 operator called defendants Stewart and Caffey, advised them of the situation, and thereafter informed Morris that "[r]escue is gonna

come to help you." Compl. at ¶ 15. Stewart and Caffey were emergency medical technicians or EMTs at Engine 73, Fire House which is located at 76th Street and Ogontz Avenue, Philadelphia, Pennsylvania. Morris neither attempted to dislodge the grape from the Decedent's throat nor drove him to nearby Germantown Hospital. At approximately 11:10:24 am, Morris again called 911 to determine when the EMTs would arrive. Morris was informed that "[r]escue was on the way." At approximately 11:14:50 am, when the EMTs still had not arrived, Morris placed a third call to the 911 operator. Morris was again told that help was on the way.

Stewart and Caffey eventually arrived at Morris's residence. They tried to restore the Decedent's breathing. When the Decedent "went into full code," they transported him to Germantown Hospital. Compl. at ¶ 23. Once at Germantown Hospital, the grape was immediately removed from the Decedent's throat. He was then transferred to St. Christopher's Hospital for Children where he died on April 24, 1998. Decedent's Death Certificate states that the cause of death was "asphyxia by choking."

Count I of Plaintiffs' Complaint asserts a § 1983 claim against Stewart and Caffey for alleged violations of Plaintiffs' son's life, liberty, personal security and bodily integrity without due process of law in violation fo the Fourteenth Amendment and for deprivation of their son's precious right, privileged and immunities secured by the laws and Constitution of the Commonwealth

of Pennsylvania. Similarly, Count II of Plaintiffs' Complaint asserts a § 1983 claim against the City for violations of the Commonwealth Constitution and the Fourth and Fourteenth Amendments.

The Complaint in the above captioned case was filed on October 1, 1999. On May, 9, 2000, this Court denied in part and granted in part Defendants motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). The City, Stewart and Caffey's motion to dismiss Plaintiff's claims under the Commonwealth Constitution and the Fourth Amendment was granted. The City, Stewart and Caffey's motion to dismiss Plaintiff's claims under the Fourteenth Amendment was denied. Defendants, the City, Stewart and Caffey now move, pursuant to Federal Rule of Civil Procedure 56, for summary judgment on Plaintiff's remaining Fourteenth Amendment claim.

On September 25, 1998, Plaintiffs Charmaine Brown and Oral Douglas, filed a civil complaint in the Court of Common Pleas of Philadelphia County against Mark T. Stewart and John Caffey. This case alleged a state tort cause of action as a result of the same factual scenario that forms the basis of Plaintiff's Federal claim. On February 17, 2000, the Honorable Arnold L. New, Judge of the Court of Common Pleas of Philadelphia County, granted Defendants Stewart and Caffey's motion for summary judgment and dismissed all claims against them.

III. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Ultimately, the moving party bears the burden of showing that there is an absence of evidence to support the nonmoving party's case. See id. at 325. Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under the applicable rule of law. See id.

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, a court may not consider

the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992). The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial, that is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. See Anderson, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See id. at 248-51.

III. ANALYSIS

Plaintiffs' Complaint alleges policies, practices or customs of the City that allegedly caused injuries to Shacquiel Douglas. Several allegations against the City are found in Plaintiffs' Complaint. One theory of liability, however, is not explicitly alleged in Plaintiffs' Complaint, but it is stated in Plaintiffs' response to Defendant's motion for summary judgment. Plaintiffs' also have sued Defendant Stewart and Caffey under Title 42 U.S.C. § 1983 for a violation of Douglas' Fourteenth Amendment rights. All of Plaintiffs' allegations are discussed below.

A. Section 1983 Claim Against the City of Philadelphia

A municipality can only be liable under § 1983 when the municipality itself causes the complained-of violation. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Baker v. Monroe Twp., 50 F.3d 1186, 1191 (3d Cir. 1995). Where a plaintiff seeks "to establish municipal liability on the theory that a facially lawful municipal action has led an employee to violate a plaintiff's rights [he] must demonstrate that the municipal action was taken with 'deliberate indifference' to its known or obvious consequences." Bd. of Co. Commissioners of Bryan County v. Brown, 520 U.S. 397, 407 (1997).

To establish municipal liability under Monell, a plaintiff must "'identify the challenged policy, [practice or custom], attribute it to the city itself, and show a causal link between the execution of the policy, [practice or custom] and the injury suffered.'" Fullman v. Philadelphia Int'l Airport, 49 F. Supp. 2d 434, 445 (E.D. Pa. 1999). In order to attribute such a policy, practice or custom to the City, plaintiff must "show that a policymaker for the City authorized policies that led to the violations or permitted practices that were so permanent and well settled as to establish acquiescence." Baker v. Monroe Twp., 50 F.3d 1186, 1191 (3d Cir. 1995).

1. Allegations stated in Plaintiffs' Complaint

Plaintiffs' Complaint identifies four policies, practices or

customs which allegedly caused injuries to Shacquiel Douglas: (1) failure to train, supervise or otherwise direct its emergency medical technicians in the administration of first aid, care treatment of choking infants; (2) failure to train, supervise, or otherwise direct its emergency technicians to familiarize themselves with the neighborhood in which they serve; (3) failure to sufficiently staff emergency medical units; and (4) failure to adequately train, supervise and or instruct 911 operators on providing callers with instructions on how to dislodge small objects caught in the throats of infants. See Compl. ¶¶ 44-47.

The Court finds that Plaintiffs have failed to point to evidence in the summary judgment record that raises a genuine issue of material fact whether the City's policies in training and equipping overtime units for the purpose of locating street addresses are inadequate and that the inadequacy was due to the City's deliberate indifference.

Deliberate indifference requires proof that a municipal actor disregarded a known and obvious consequence of his action. Bd. of Co. Commissioners v. Brown, 520 U.S. 397, 410 (1997). Plaintiffs point to the testimony of two individuals, Captains Butts and Stanton. Plaintiffs assert that these policy makers testified that they were aware of the risks that stem from an EMT's lack of familiarity with a neighborhood, but that the City was deliberately indifferent. See Depo. of Captain Butts, at 205-206; Depo. of

Stanton, at 19.

Once a § 1983 plaintiff identifies a municipal policy or custom, he must "demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." See Bryan Co., 520 U.S. at 404.

Plaintiffs point to evidence that demonstrates that overtime units, such as the unit Stewart and Caffey were in, are usually composed of EMTs who are sent for a twelve hour shift from their usual station to a fire house in a completely different section of the City. See Depo. of George Butts, at 48-49. At the time of the incident that gave rise to this case, there was no City policy in place to insure that the newly assigned EMTs have any prior familiarity with streets covered by the new station house during their overtime work. See id. Regular units on the other hand, receive extensive training about the neighborhood and street location before they are permitted to go out on an emergency run. See Depo. of Lt. Garcia, at 93-94.

If, as here, the policy or custom does not facially violate federal law, causation can be established only by "demonstrat[ing] that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice." See Bryan Co., 520 U.S. at 407; see also City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989).

Failure to adequately screen or train municipal employees can ordinarily be considered deliberate indifference only where the failure has caused a pattern of violations. See Berg v. County of Allegheny, 219 F.3d 261, 276 (3d Cir. 2000); Bryan Co., 520 U.S. at 408-09. Captain Butts testified that he is the Administrative Captain of EMS and that he is responsible for EMS complaints, investigating and processing. See Depo. of Captain Butts, at 10. He also testified that for the last three to fours years there were, on average, 160,000 to 170,000 medic runs a year. See id. at 12-20. According to Butts, during the same period, out of the 160,000 to 170,000 medic runs, there were only an average of 200 complaints against medic units a year. See id. at 264-65. Butts further testified that of those 200 complaints a year, an extremely low percentage of complaints concern lack of service or delayed response times. See id. 265-66. Plaintiff has not identified any evidence that demonstrates a systematic problem within the Fire Department of EMTs not responding to calls in a timely fashion due to inability to locate the address of the emergency call. See id. at 230.

Plaintiffs attack Butts' testimony by noting that his examination of response times did not examine response times for medic 33B, the station from which Stewart and Caffey worked at on the day of the events surrounding this case. Plaintiffs, however, fail to note that the response times were monitored looking at the

Philadelphia Fire Department as a whole, system wide, rather than a specific area. See id. at 257. Plaintiff fails to make any argument as to what this fact ultimately means or what inference it raises. The summary judgment record, as a result, lacks any evidence that demonstrates a pattern of violations.

Because the United States Supreme Court in Canton left open the possibility that a plaintiff might succeed in carrying a failure-to-train claim without showing a pattern of constitutional violations, the Third Circuit hypothesized that, in a narrow range of circumstances, a violation of federal rights may be a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations. See Berg, 219 F.3d at 276. The likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens' rights could justify a finding that policymakers' decision not to train the officer reflected "deliberate indifference" to the obvious consequence of the policymakers' choice. See id.; The United States Supreme Court has stated that an example of deliberate indifference to an obvious risk is arming officers without training them "in the constitutional limitations on the use [of the arms.]" Canton, 489 U.S. at 390 n. 10.

The record is replete with evidence of procedures guarding against an error such as that made by Stewart and Caffey. Harry

Bannon, Operations Officer of the Philadelphia Fire Academy, testified that there are numerous situations in which a firefighter will be responsible for working in an area that they are not familiar. See Depo. of Harry Bannon, at 63. Bannon testified that an individual who was assigned to a unit and was unfamiliar with that locale can make himself aware of an address by using the resources provided by the City. See id. at 63. He further notes that the City provides a radio to contact the Fire Communications Center, through which he can obtain a map location. See id. Also provided by the City are maps. See id. at 64.

Another witness, Lieutenant Edward Garcia, the Fire Lieutenant at the 76th and Ogontz station where Medic 33B was stationed, testified that he was responsible for making sure that the equipment was in working order. See Depo. of Lt. Garcia, at 74. He testified that ADC map books that were on Medic 33B at the time of the incident alleged in Plaintiffs' Complaint were in excellent working condition. See id. at 75. Garcia explained that if a firefighter was not familiar with an area, then they would use the tools that the Fire Department provides to find a specific location. See id. at 35, 45, 46.

Garcia also testified that in the Fire Department, firefighters are frequently responsible for responding to emergencies that occur in areas that the firefighter is not usually stationed. The testimony of Garcia indicates that the City

provides tools to firefighters to locate any address in the City.

It is not sufficient for Plaintiffs to demonstrate that more, or different training would be better than the current system, rather Plaintiffs need to demonstrate that the current system is in place as a result of City policy makers' deliberate indifference. Plaintiffs' fail to point to evidence that the type of harm that occurred to Plaintiffs occurs with such frequency that is should be obvious to City policy makers. See Berg, 219 F3d. at 276.

Because Plaintiffs' have failed to demonstrate deliberate indifference on the part of policy makers, the Court finds that there is no genuine issue of material fact on this issue and summary judgment must be granted as a matter of law on Plaintiffs' claim against the City.\[1]

2. <u>Allegations asserted for in response to Defendant's summary judgment motion</u>

Plaintiffs also allege the City is liable for policies in oversight and discipline of its officers that were clearly

[1] In addition to Plaintiffs' cause of action for failure to train, supervise, or otherwise direct its emergency technicians to familiarize themselves with the neighborhood in which they serve, Plaintiffs' Complaint also alleges failure to train, supervise or otherwise direct its emergency medical technicians in the administration of first aid, care treatment of choking infants, failure to sufficiently staff emergency medical units and failure to adequately train, supervise and or instruct 911 operators on providing callers on how to dislodge small objects caught in the throats of infants. See Compl. ¶¶ 44-47. On the latter three theories stated in Plaintiffs' Complaint, Defendant has also moved for summary judgment and has set forth arguments supporting its position. See Def.['s] Mot. for Summ. J., § D1. Plaintiffs' have failed to point to evidence in the summary judgment record that raises genuine issues of material fact. As a result, the Court grants summary judgment on these issues.

deficient and that these inadequacies were due to the City's deliberate indifference and that these deficiencies caused violations of Plaintiffs' right. A municipality may be liable for inadequate supervision and discipline. See Colburn v. Upper Darby, 838 F.2d 663 (3d Cir. 1988).

The Court's analysis is guided by the standard of municipal liability stated above. Here, Plaintiffs' expert baldly asserts that there is a City policy or common practice of improperly investigating citizen complaints that involve delayed responses. He cites no evidence nor do Plaintiffs cite any evidence to support this assertion. Plaintiffs' expert's argument in this regard is specious and misleading.

Plaintiffs' expert asserts that "there is a policy or common practice of improperly investigating citizen complaints which involve delayed responses." See Letter from Scott Donohue, dated Feb. 28, 2001. He then asserts that this is clearly demonstrated based on his assessment of the manner in which City investigates complaints. See id. He fails to cite a single specific instance where the City improperly investigated a complaint regarding delayed response. Vague and ambiguous allegations about the City's practices cannot defeat Defendant's motion for summary judgment. Although the court must draw all reasonable inferences in the light most favorable to the nonmovant, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or

vague statements.

Assuming inadequate supervision and discipline of its Officers, Plaintiffs fail to demonstrate how three complaints concerning Defendant Caffey, covering a period of eighteen months prior to the incident that gave rise to this case, caused injury to Plaintiffs. First, Plaintiffs do not point to any evidence that demonstrates the basis for the complaints against Defendant Caffey. The complaints could have stemmed from causes other than a "delayed response." For example, someone could have complained that he drove beyond the posted speed limit or failed to yield at a particular intersection. Plaintiffs, however, point to no evidence that would support the allegation that the City's failure to investigate complaints caused Plaintiffs' injury or evidence that would give rise to an inference of the City's mishandling of complaints. As a result, there is no evidence that demonstrates the alleged policy or custom caused injury to Plaintiffs.

Because Plaintiffs have failed to raise a genuine issue of material fact whether a policy or custom in oversight and discipline by the City of its officers was clearly deficient or whether such a policy caused injury to Plaintiffs, the Court grants summary judgment on this theory of municipal liability.

B. <u>Section 1983 Claim Against Stewart and Caffey</u>

In Plaintiffs' state court action, they sought to hold

Defendants Stewart and Caffey liable for the death of their son. Plaintiffs claimed that Stewart and Caffey did not exercise the well established and universally recognized protocols for chocking situations and that they were grossly negligent in their care of the decedent when they were utterly thoughtless in implementing the proper measures to relieve decedent's choking. See State Court Complaint, ¶¶ 13, 20. The Honorable Arnold L. New, Judge of the Court of Common Pleas of Philadelphia County, granted Defendants Stewart and Caffey's motion for summary judgment and dismissed all claims against them.

Under the principle of res judicata, or claim preclusion, a final judgment on the merits of an action precludes the parties from relitigating claims that were or could have been raised in the original action. See Gregory v. Chehi, 843 F.3d 111, 116 (3d Cir. 1988). A judgment disposing of a case by a court of competent jurisdiction is a final judgment. See Bearoff v. Bearoff Bros. Inc., 327 A.2d 72, 75 (Pa. 1972).

Because a Pennsylvania court issued the initial judgment here, this Court looks to Pennsylvania law on preclusion. See Gregory, 843 F.3d at 116. Pennsylvania requires a concurrence of four conditions before claim preclusion can apply. The two actions must share an identity of the (1) things sued on; (2) cause of action; (3) persons and parties to the action; and (4) quality or capacity of the parties suing or being sued. See id.

"Isolating the alleged wrongful act is critical to the first requirement - identity of the subject matter." See Gregory, 843 F.2d at 116. In this case, a single event, the April 22, 1998 choking of Shacquiel Douglas and the emergency medical run made by Stewart and Caffey, are the events that gave rise to both the state and federal court actions.

Plaintiffs assert that the federal and state lawsuits each seek different types of relief. The fact that different remedies are pursued is not significant. Gregory, 843 F.2d at 118. The Third Circuit in Gregory noted that to the extent a prior decision based its denial of claim preclusion on differences in the relief obtainable, it is disapproved. See id. 843 F.2d at 119. Thus, the first prong of the claim preclusion analysis is satisfied.

The second element requires an identity of the cause of action or "claim." See id. at 117. "Claim" is defined broadly in transactional terms, regardless of the number of substantive theories advanced in the multiple suits by the Plaintiffs. See id; Restatement (Second) of Judgments § 24, comment a (1982). A single cause of action may comprise of claims under a number of different statutory and common law grounds. See id.; Davis v. United States Steel Supply, 688 F.2d 166, 171 (3d Cir. 1982). Claim preclusion is generally thought to turn on the essential similarity of the underlying events giving rise to the various legal claims, although a clear definition of that requisite similarity has proved elusive.

See Gregory, 843 F.2d at 117.

The Supreme Court of Pennsylvania applied "res judicata" in Helmig v. Rockwell Mfg. Co., 389 Pa. 21, 131 A.2d 622 (1957), despite the fact that the first suit was brought in assumpsit and the second in trespass for a conspiracy. It was not important that in the second suit plaintiff sought punitive damages in addition to the compensatory recovery claimed in both. The court noted that "the acts complained of in both actions are identical" and predicted that the plaintiff would "inevitably call the same witnesses and present exactly the same evidence in this second action." Id. at 30, 131 A.2d at 626. In such circumstances, the court was required to pierce the technical differences between the two actions, take a broad view of the subject, and bear in mind the actual purpose to be attained. Id. at 30, 131 A.2d at 626-27.

The Restatement observes that a claim extinguished by res judicata "includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." Restatement (Second) of Judgments § 24(1) (1982). In determining what constitutes a "transaction," pragmatic consideration of whether the facts are related in time, space, origin, or motivation is appropriate. Comment c to section 24 emphasizes that "where one act causes a number of harms to, or invades a number of different interests of the same person, there

is still but one transaction; a judgment based on the act usually prevents the person from maintaining another action for any of the harms not sued for in the first action."

Multiple claims do not arise solely because a number of different legal theories deriving from a specific incident are used to assert liability. See Gregory, 843 F.2d at 117. The transaction remains unitary "although the several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts, or would call for different measures of liability or different kinds of relief." Id.

When a plaintiff relies on both state and federal law, the Restatement advocates claim preclusion, provided that the first court to adjudicate the matter has jurisdiction to entertain the omitted claim. See Restatement (Second) of Judgments § 25 (1982). See Kremer v. Chemical Constr. Corp., 456 U.S. 461, 482 n. 22 (1982). The United States Supreme Court has recognized that a state court may entertain a § 1983 action. See State of Maine v. Thiboutot, 488 U.S. 1, 1, n.1 (1980). Consequently, the state court in Plaintiffs' first lawsuit had jurisdiction to entertain a § 1983 claim.

The essence of Plaintiffs' Complaint is the choking of Shacquiel Douglas and the emergency medical run made by Stewart and Caffey. Plaintiffs sued in state court on the theories of gross negligence and presently bring that same transaction before this

Court. Plaintiffs federal suit now rests on alleged violation of Shacquiel Douglas' civil rights. Distinct causes of action do not arise merely because the motivations alleged in the two forums differ. See Gregory, 843 F.2d at 118. Nor is it critical that one is based on federal law and the other on state law. See Restatement (Second) of Judgments § 25 comment c.

Plaintiffs cite a Pennsylvania Superior Court case, McArdle v. Tronetti, as instructive on this issue. The Court, however, finds McArdle factually distinguishable to the case at bar and thus inapposite. In McArdle, the Plaintiff filed a complaint in state court that asserted claims for professional malpractice, gross negligence, civil conspiracy, vicarious liability and malicious use of process. See 426 Pa. Super. at 609. Plaintiff also filed a suit in federal court in which the court declined to exercise jurisdiction over the various pendant state claims. See id. at 610. Upon preliminary objections from the Defendants, the trial court in the state action concluded that Plaintiff's claims were barred by the application of res judicata. See id. Plaintiff thereafter appealed. See id. On appeal, the Superior Court of Pennsylvania held that an examination of the two complaints

> revealed that the claims set forth therein arose out of same set of factual circumstances. In addition, [the examination] establishes that [plaintiff] demanded both compensatory and punitive relief in connection with each set of claims. However, despite these similarities, we find that the two sets of claims lack the identity necessary to support the application of res judicata.

See id. at 612-13.

The superior court noted that in the federal action, plaintiff raised pendent state claims regarding conspiracy, professional malpractice, malicious use of process, and "tortious conduct per se." See id. at 614. The Court also noted that the federal district court declined to exercise jurisdiction and consider them. See id. The Court reasoned that pursuant to the Restatement (Second) of Judgments § 25, the federal court's disposition of the state claims should not affect plaintiff’s ability to present claims in common pleas court regarding conspiracy, professional malpractice, gross negligence, and malicious use of process. See id.

Here, Plaintiffs Charmaine Brown and Oral Douglas brought suit in both state and federal court. The state court Complaint, however, made no allegation of violations of Shacquiel Douglas’ civil rights. As a result while the state court could have entertained or declined to entertain a § 1983 cause of action, the court was never presented with this cause of action. Unlike in McArdle, where a judge declined to entertain certain claims, the state court in this case was never presented with Plaintiffs’ § 1983 claim. If, for example, Plaintiffs’ alleged a § 1983 claim in its state court complaint and the state court judge declined to exercise jurisdiction of the claim, then the facts of McArdle would control this situation. Because McArdle is distinguishable from

the case at bar, the Court finds the case inapposite.

The third and fourth elements, the identity of the parties and their capacities, are satisfied as Defendant Stewart and Caffey are Defendants in both the state and federal cases and are sued in their individual capacities. Plaintiffs here assert that because they have a cause of action against Defendants in their own right, this element of the res judicata determination is not satisfied. The Court notes, however, that the essence of the cause of action asserted against Defendants is not altered by the addition of more parties. See Gregory, 843 F.2d at 119.

This Court, applying preclusion principles, is bound by the Full Faith and Credit statute, 28 U.S.C. § 1738, and must give a prior state judgment the same effect as would the adjudicating state. Because the state court judgment issued by Judge New was issued by a court with jurisdiction over both the state and federal claims, this Court is bound to apply the principles of Pennsylvania law on claim preclusion. As a result, these principles bar the Plaintiffs' § 1983 claim against Defendants Stewart and Caffey.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARMAINE BROWN & ORAL DOUGLAS, in their individual capacities and as Administrators of the Estate of SHACQUIEL A. DOUGLAS	:	CIVIL ACTION
v.	:	
CITY OF PHILADELPHIA, et al.	:	NO. 99-4901

O R D E R

AND NOW, this 31st day of July, 2001, upon consideration of Defendants City of Philadelphia, Mark T. Stewart and John Caffey's Motion for Summary Judgment and Memo. of Law in Support of Summary Judgment (Docket Nos. 31), Plaintiffs' Memo. of Law in Support of Plaintiffs' Response to the Motion for Summary Judgment (Docket No. 39), Defendant's Reply to Plaintiffs' Response (Docket No. 40), IT IS HEREBY ORDERED that Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED that **JUDGMENT** is entered in favor of Defendants and against Plaintiffs.

BY THE COURT:

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HERBERT J. HUTTON, J.